

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 SAN ANTONIO DIVISION
4 In re:) Chapter 11
5 KRISJENN RANCH, LLC) Case No. 20-50805
6 Debtor)
7)
8 KRI SJENN RANCH, LLC and)
9 KRI SJENN RANCH, LLC-SERIES)
10 UVALDE RANCH, and KRI SJENN)
11 RANCH, LLC-SERIES PIPELINE)
12 ROW as successors in)
13 interest to BLACKDUCK)
14 PROPERTIES, LLC,)
15 Plaintiffs)
16 v.)
17)
18 DMA PROPERTIES, INC., and)
19 LONGBRANCH ENERGY, LP,)
20) Adversary No. 20-05027
21 Defendants)
22)
23 DMA PROPERTIES, INC.)
24 Cross-Plaintiff/Third)
25 Party Plaintiff)
v.)
KRI SJENN RANCH, LLC,)
KRI SJENN RANCH, LLC-SERIES)
UVALDE RANCH, and KRI SJENN)
RANCH, LLC-SERIES PIPELINE)
ROW, BLACK DUCK)
PROPERTIES, LLC, LARRY)
WRIGHT, and JOHN TERRILL) Adversary No. 20-05027
Cross-Defendants/)
Third-Party Defendants)
EXCERPTED RECORD OF THE ORAL DEPOSITION OF
DARIN BORDERS INDIVIDUALLY AND AS 30(b)(6)

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1 A-P-P-E-A-R-A-N-C-E-S
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17 ALSO PRESENT:
18 Daniel Moore; (via remote)
19 Darin Borders, (via remote)
The Witness;
20 Deborah Davidson, (via remote)
21 Certified Shorthand Reporter.
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23
24
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1 REPRESENTATIVE OF LONGBRANCH ENERGY, LP
2 DECEMBER 16, 2020
3 (REPORTED REMOTELY VIA ZOOM)
4
5
6 EXCERPTED RECORD OF THE ORAL DEPOSITION OF DARIN
7 BORDERS, INDIVIDUALLY AND AS 30(B)(6) REPRESENTATIVE OF
8 LONGBRANCH ENERGY, LP, produced as a witness at the
9 instance of the Debtors, and duly sworn, was taken in
10 the above-styled and numbered cause on December 16,
11 2020, before Deborah A.G. Davidson, CSR, RPR, in and for
12 the State of Texas, reported by machine shorthand, at the
13 office of Darin Borders located in Gary, Texas, pursuant
14 to the Emergency Orders Regarding the COVID-19 State of
15 Disaster, and pursuant to the Federal Rules of Civil
16 Procedure and the provisions stated on the record or
17 attached hereto.
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1 (The following is excerpted testimony from the oral
2 deposition of Darin Borders)
3 EXAMINATION
4 BY MR. MULLER:
5 Q. Did George Pigg ever give you any legal counsel
6 on what a successors and assigns means?
7 MS. HEBERT: I am going to object
8 there, John, because we don't know what the situation is
9 with Pigg and whether he was an attorney to Black Duck,
10 and so you're starting to -- to stray into privileged
11 grounds.
12 MR. MULLER: Okay. I am going to -- I
13 would ask that you not make speaking objections. We
14 have already had a hearing on this, and you can instruct
15 him not to answer, but I am going to -- I am going to
16 re-tender the question.
17 MS. HEBERT: Okay.
18 Q. (BY MR. MULLER) Did -- did George Pigg give
19 Longbranch Energy any legal counsel on the meaning of
20 the term "successors and assigns"?
21 MS. HEBERT: And I am going to object on
22 privilege and direct you not to answer, Darin.
23 Q. (BY MR. MULLER) Okay. Now, Mr. Borders, this
24 is a very important question. I will suspend this
25 deposition immediately after its conclusion and be

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<p>1 calling for an emergency hearing. That hearing is 2 likely to take place early next week. Are you going to 3 be available?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And I should ask you first, are you 6 going to take your lawyer's counsel to not answer this 7 question?</p> <p>8 A. Yes. My lawyer told me not to answer the 9 question. Maybe we could rephrase the question.</p> <p>10 Q. Sure. I am going to ask you a couple of other 11 ones, and she's going to object, and then you will have 12 to decide whether you want to accept her counsel or not. 13 What did George Pigg tell you about successors and 14 assigns and that legal definition at the time the 15 Longbranch assignment was drafted?</p> <p>16 MS. HEBERT: I am going to object 17 privileged and direct you not to answer, Darin.</p> <p>18 Q. (BY MR. MULLER) What did George Pigg -- oh, I 19 am sorry. Are you going to answer or are you going to 20 accept your lawyer's advice?</p> <p>21 A. I am going to accept my lawyer's advice as long 22 as she's giving it.</p> <p>23 Q. I understand. I understand. What did George 24 Pigg tell you at the time the Longbranch assignment was 25 drafted about carried interests?</p>		<p>1 about the meaning of the term "successors and assigns" 2 at the time the Longbranch assignment was drafted?</p> <p>3 MS. HEBERT: Objection. Privilege. I am 4 going to direct you not to answer.</p> <p>5 Q. (BY MR. MULLER) Are you going to accept that 6 advice?</p> <p>7 A. Yes. I will take my lawyer's advice there.</p> <p>8 Q. Was your understanding of the Longbranch 9 assignment based on the counsel of George Pigg?</p> <p>10 A. Yes. And the interpretation of Larry Wright 11 and Daniel Moore at the same time.</p> <p>12 MR. MULLER: Okay. Let me -- yeah. Let's 13 go off the record.</p> <p>14 MS. HEBERT: Sure.</p> <p>15 (Recess from 11:01 a.m. to 11:05 a.m.)</p> <p>16 THE REPORTER: Back on the record 11:05.</p> <p>17 Q. (BY MR. MULLER) Okay. Mr. Borders, we are 18 going to return to the questions I have about the case 19 here in a little bit, but for now we have got to take a 20 brief detour and deal with some of your recent written 21 discovery responses. I am going to show you what is 22 marked as Exhibit 1.</p> <p>23 (Exhibit 1 marked.)</p> <p>24 MR. MULLER: Debbie is this first one for 25 this deposition, correct?</p>	
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<p>1 MS. HEBERT: Objection. Privilege. I am 2 going to direct you not to answer.</p> <p>3 Q. (BY MR. MULLER) Are you going to accept your 4 lawyer's advice?</p> <p>5 A. Yes.</p> <p>6 Q. What did George Pigg tell you, if anything, at 7 the time the Longbranch assignment was drafted about 8 interests that run with the land?</p> <p>9 MS. HEBERT: Objection. Privileged. I am 10 going to direct you not to answer. John, do you --</p> <p>11 THE WITNESS: Taking my lawyer's advice --</p> <p>12 MS. HEBERT: -- want to go off the record 13 at all here?</p> <p>14 MR. MULLER: No. I think the judge will -- 15 I think this will be very insightful for the judge.</p> <p>16 Q. (BY MR. MULLER) What did George Pigg tell you, 17 if anything, at the time the Longbranch assignment was 18 drafted about the enforceability of net profits 19 interest?</p> <p>20 MS. HEBERT: Objection. Privilege, and I 21 am going to direct you not to answer.</p> <p>22 Q. (BY MR. MULLER) Are you going to accept that 23 advice?</p> <p>24 A. I am going to accept that advice, yes.</p> <p>25 Q. What did George Pigg tell you, if anything,</p>		<p>1 THE REPORTER: Yes.</p> <p>2 Q. (BY MR. MULLER) And let's scroll down, and 3 this document --</p> <p>4 MR. MULLER: Can you Zoom back? It's a 5 little tight.</p> <p>6 Q. (BY MR. MULLER) This is your objections and 7 responses to my client's requests for admissions. Have 8 you seen this document before?</p> <p>9 A. Yeah.</p> <p>10 Q. Okay. Let's scroll down. Okay. I want to 11 look at request for admission number three.</p> <p>12 MR. MULLER: Christie, I don't -- I didn't 13 really get an answer there. There is some kind of an 14 objection that I think equates to equivocation. Are you 15 willing to drop that -- that objection?</p> <p>16 MS. HEBERT: For number three?</p> <p>17 MR. MULLER: Three.</p> <p>18 MS. HEBERT: No, not at this time, John. I 19 think there's a -- there was uncertainty about how 20 the -- the net profits agreement term might be used in 21 the right of way, and so Longbranch was just construing 22 it as -- stating it as how, you know, it construed it. 23 So not at this time.</p> <p>24 MR. MULLER: Okay. And you say that the 25 term "net profits" is -- that's ambiguous to you?</p>	

<p>1 MS. HEBERT: No. Just that Larry Wright 2 and the debtors might be using the term differently, as 3 they have stated that -- that they may be using the term 4 differently. So Longbranch was just being clear about 5 its construction of the agreement, which is the plain 6 language of the agreement.</p> <p>7 MR. MULLER: So you believe the term "net 8 profits" as used in request for admission number three 9 is ambiguous?</p> <p>10 MS. HEBERT: There was just not certainty 11 about how Larry Wright and the debtors were defining 12 that term. So Longbranch wanted to be clear about how 13 it was defining the term based on its plain 14 understanding.</p> <p>15 MR. MULLER: Okay. The next request for 16 admission, the same request, will you drop that 17 objection?</p> <p>18 MS. HEBERT: Same response.</p> <p>19 MR. MULLER: Request for admission number 20 seven, again I believe the rules require you to admit or 21 to deny and to not equivocate. I would request that 22 every -- everything after the word "admitted" be struck. 23 Are you willing to do that?</p> <p>24 MS. HEBERT: No.</p> <p>25 MR. MULLER: No. So you are admitting to</p>	<p>9</p> <p>1 THE WITNESS: Okay. 2 (Recess from 11:11 a.m. to 11:13 a.m.) 3 MR. MULLER: Okay. Are we back on? 4 THE REPORTER: Yes. 5 MR. MULLER: Okay. And I apologize, Darin. 6 We have trial on the 11th, and of course we have the 7 holidays, so we have a very limited amount of time to 8 deal with issues like these. I am here to collect your 9 testimony today. I do that both through your oral 10 testimony and through your responses to written 11 discovery, and so we are going to need to -- we are 12 going to need to address some issues pretty quickly in 13 the case. I want to show you -- can you scroll back and 14 look at this exhibit, Exhibit No. 2. 15 (Exhibit 2 marked.) 16 MR. MULLER: Zeke, can you zoom out and 17 scroll down. 18 Q. (BY MR. MULLER) Okay. Do you recognize this 19 document, Mr. Borders? 20 A. Can you zoom in on that a little bit? 21 Q. Sure. 22 A. That's -- that's about where it takes for me to 23 read. I am almost blind -- 24 Q. Okay. 25 A. -- but I believe I remember -- yeah. I</p>
<p>10</p> <p>1 something that we didn't ask you and otherwise denied, 2 that's your response?</p> <p>3 MS. HEBERT: No. We are not willing to 4 drop the rest of the response there. We will leave the 5 language as it -- as it states.</p> <p>6 MR. MULLER: Okay. The same with request 7 for admission number four, rather than answering admit 8 or denied, you have admitted to apparently something -- 9 no. I am sorry. Hang on. The word "pipeline" is -- 10 you are objecting that the word "pipeline" is 11 unambiguous?</p> <p>12 MS. HEBERT: It should be -- I think that's 13 a typo. It should be ambiguous or -- next to the word 14 "pipeline" when taken in -- in the context of the 15 relevant agreement, but here it's ambiguous because 16 you're not -- we're not clear about what it's referring 17 to.</p> <p>18 MR. MULLER: Okay. So again not going to 19 modify your response to request for admission number 20 eight?</p> <p>21 MS. HEBERT: Not at this time.</p> <p>22 MR. MULLER: Let's bring up Exhibit No. 2, 23 the rogs.</p> <p>24 THE WITNESS: Can I go to the restroom?</p> <p>25 MR. MULLER: Sure.</p>	<p>12</p> <p>1 believe -- I don't know the -- yeah. I believe -- I 2 believe I recognize this. Yes.</p> <p>3 Q. Okay. Let's look at interrogatory number one. 4 Mr. Borders, this first interrogatory has to do with the 5 ownership of Longbranch. I believe you have answered in 6 this deposition in a way that's consistent with this 7 written response.</p> <p>8 MR. MULLER: Christie, this objection -- 9 these objections are unfounded and clearly unnecessary. 10 I would request that you drop them.</p> <p>11 MS. HEBERT: I am not going to drop them at 12 this time. I mean, subject to this objection Darin does 13 answer -- Longbranch does answer the questions.</p> <p>14 Q. (BY MR. MULLER) Okay. Interrogatory number 15 two, Mr. Borders, this is a question about the 16 representations Mr. Wright made to you, and I believe 17 your response is consistent with what you said here 18 today.</p> <p>19 MR. MULLER: Christie, we would -- the 20 objections you have are unfounded and should be 21 withdrawn. Are you willing to do so?</p> <p>22 MS. HEBERT: No.</p> <p>23 MR. MULLER: Interrogatory number three, 24 good. And again, Christie, your objections are 25 marshalling objections; is that correct?</p>

<p>1 MS. HEBERT: Yes. Because it requires 2 Longbranch to marshal all facts in -- all facts. 3 MR. MULLER: And you are aware that the 4 marshalling objection is borne from the comments of the 5 Texas Rules of Civil Procedure, correct? 6 MS. HEBERT: The objection still stands. 7 MR. MULLER: Do you have any federal 8 authority for a marshalling objection? 9 MS. HEBERT: I mean, I don't have authority 10 that I am going to cite to you right now on this 11 deposition. 12 MR. MULLER: Can you state why the answer 13 to these questions are unduly burdensome? 14 MS. HEBERT: Because recounting all of the 15 facts here would -- would take quite some time. That's 16 one of the purposes of the -- the deposition here, you 17 know, we layout the answer to the -- to the full extent 18 here as much as we can, but you know, that's grounds -- 19 all statements and all the facts is something that is 20 not going to happen here in an interrogatory. 21 MR. MULLER: So stating all facts relating 22 to fraudulent statements would be unduly burdensome? 23 MS. HEBERT: All the facts, yes. 24 MR. MULLER: Relating to fraudulent 25 representations would be unduly burdensome? Is that --</p>	<p>13</p> <p>1 MS. HEBERT: Not at this time. 2 MR. MULLER: Are you willing to modify any 3 of your objections in the written discovery whatsoever? 4 MS. HEBERT: Not at this time. 5 MR. MULLER: Bring up three. 6 (Exhibit 3 marked.) 7 Q. (BY MR. MULLER) Mr. Borders, these are your 8 written responses to request for production. Do you 9 recognize them? 10 A. Yes. 11 Q. Let's scroll to -- Mr. Borders, let's look at 12 response number 12. Is that correct? Did you not 13 communicate with Daniel Moore by texts? 14 MS. HEBERT: Objection. Form. Looking at 15 number 12, Mr. Muller? 16 THE WITNESS: Produce any and all text 17 messages of a -- 18 Q. (BY MR. MULLER) Mr. Borders, when you were -- 19 did you often -- did you communicate with Daniel Moore 20 by texts? 21 A. Yes. 22 Q. Do you have text messages with Daniel Moore 23 that relate to the right of way? 24 A. Yes. 25 Q. Do you have text messages with Danny Moore that</p>
<p>1 is that your position? 2 MS. HEBERT: Yes. 3 MR. MULLER: Are you aware of Federal 4 Rule 9? 5 MS. HEBERT: Which requires you to be 6 specific when you plead fraud, and -- and Mr. Borders 7 and Longbranch is specific, but all facts is quite -- 8 quite a heavy burden, Mr. Muller, and you know that too. 9 MR. MULLER: All facts relating to your 10 pleadings for -- for fraud, so you are not going -- you 11 are not going to drop your objections? 12 MS. HEBERT: I am not going to drop our 13 objections at this time. 14 MR. MULLER: Interrogatory five, your 15 objections relating to being overbroad and unduly 16 burdensome, do you have a basis for that? 17 MS. HEBERT: Again, all -- all facts is an 18 extensive burden for Longbranch to meet. Longbranch 19 summarizes those facts in the response to interrogatory. 20 MR. MULLER: I am going to request that you 21 drop this objection. Are you willing to do so? 22 MS. HEBERT: Not at this time. 23 MR. MULLER: The same question with regard 24 to -- the same request with regards to interrogatory 25 number nine, are you willing to modify your objections?</p>	<p>14</p> <p>1 relate to the net profits interest? 2 A. I am not sure what was in there. There are 3 some texts that could -- could include something -- 4 could include it, yeah. You're looking at 11 or 12? 5 Q. Okay. Was your primary method of communicating 6 with Mr. Moore through E-mail? 7 A. I would say the primary method was by the 8 phone. 9 Q. Okay. Let's look at request for production 17. 10 MR. MULLER: Again, Christie, I am not 11 aware of any legal basis for this objection. Would you 12 be willing to drop it? 13 MS. HEBERT: No. I am not going to drop 14 that objection at this time. 15 MR. MULLER: Are you willing to drop any of 16 the objections contained in the request for production? 17 MS. HEBERT: Not at this time. 18 MR. MULLER: Okay. Let's go off the record 19 for a minute. 20 THE REPORTER: Off the record 11:27. 21 (The excerpt testimony is concluded.) 22 23 24 25</p>

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2 FOR THE WESTERN DISTRICT OF TEXAS
3 SAN ANTONIO DIVISION
4 In re:) Chapter 11
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PROPERTIES, LLC, LARRY) Adversary No. 20-05027
21 WRIGHT, and JOHN TERRILL)
Cross-Defendants/)
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23
24 REPORTER'S CERTIFICATION OF THE EXCERPT FROM THE
25 ORAL DEPOSITION OF DARIN BORDERS INDIVIDUALLY AND AS

18

1 30(b)(6) REPRESENTATIVE OF LONGBRANCH ENERGY, LP
2 DECEMBER 16, 2020
3 (REPORTED REMOTELY VIA ZOOM)
4
5 I, Deborah A. G. Davidson, Certified Shorthand
6 Reporter in and for the State of Texas, hereby certify
7 that the excerpted testimony contain and constitute a
8 true and correct transcription of my shorthand notes.
9 SUBSCRIBED AND SWORN to on this, the 17th day of
10 December, 2020.

11
12 _____
13 Deborah A. G. Davidson, CSR No. 1857
Firm Registration 253
Expiration Date: 8/31/2022
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15 San Antonio, Texas 78216
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